

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION

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ORDER ADHERING TO
SCHEDULED CONFERENCE
DATE OF OCTOBER 28, 2004,
AND PROVIDING DIRECTIONS

21 MC 100 (AKH)
(DiVirgilio v. Silverstein Properties)
(04 Civ. 7239)

ALVIN K. HELLERSTEIN, UNITED STATES DISTRICT JUDGE:

The City of New York asks me to consider postponing the conference scheduled for October 28, 2004 at 4:00 p.m. The City advises of a recently formed, not for profit captive insurance company – WTC Captive Insurance Company, Inc. – and states that the company is to be funded by a grant from the Federal Emergency Management Company, Inc., that it is in process of being licensed by the New York State Insurance Department, that it is seeking to retain counsel, and that it will be representing the City and various contracting companies involved in removing the debris at the World Trade Center, in the aftermath of the terrorist-related aircraft crashes of September 11, 2001. I decline to postpone the October 28 conference.

21 MC 100 is one of several tracks of cases relating to the September 11 crashes. It is necessary that all move apace. Dates of conferences are fixed as part of the business of the preceding conference, and changes are likely to affect many people. Once a conference is set, it is too difficult and, possibly, too prejudicial to change the date.

There are important items of business to address. I recently issued an order (October 13, 2004), addressing issues of late notices, federal jurisdiction, multiple plaintiffs in single actions, and requiring specificity of pleadings. A discussion of the effects and consequences of those orders is in order.

DiVirgilio v. Silverstein Properties is a vast complaint, naming many parties. It purports to sue for 14 plaintiffs and to represent classes of litigants, of whom some are alleged to have suffered injuries and others, not. The classes are many and disparate: police officers, firefighters, sanitation workers, transit workers, utility workers (Con Edison and Verizon), construction workers, union workers, day laborers, and other individual workers, volunteers and contractors. The defendants include 15 of the Silverstein Companies, alleged to be the owner or the lessee of the several premises, or the party that engaged contractors, or the party responsible for operating, maintaining, managing, controlling and inspecting the premises.

It is urgent that the scope and size of this lawsuit be understood, in relation to the broad scope of its purported representation, and in relation to other, similarly-situated plaintiffs in their own suits. If a class action is to proceed, the class should be certified at an early date. If, on the other hand, individual actions are to proceed, that, too, should be clarified as promptly as possible. The consistency, or not, of a class action, in relation to my recently-issued orders also has to be understood.

Robert A. Weiner, Esq. of McDermott Will & Emery represent that they serve as corporate counsel for the City's captive insurance company, and they ask for a 90-day enlargement of the time to Answer the DiVirgilio complaint, on behalf of Turner Construction Company, Bovis Lend Lease, Inc., AMEC Construction Management, Inc. and Tully Construction Co., Inc., the contractor parties. The issue of an enlargement will be discussed at the conference. Counsel should be prepared to justify an enlargement of that extent.

Accordingly, for the reasons stated, the conference scheduled to be held October 28, 2004 will proceed as scheduled. Counsel for the parties involved, which may include the McDermott Will firm and and other actual or potential lead counsel, should collaborate on submitting a proposed agenda to me by noon of October 26, 2004. Pending further advice, the additions to the service list requested by that firm shall be made.

SO ORDERED.

Dated: New York, New York
October 20, 2004

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ALVIN K. HELLERSTEIN
United States District Judge